

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5459 OF 2023

Subhodh Jayant Saraf
and another

.... Petitioners

Versus

Shrimati Shila Jayant Saraf
and others

.... Respondents

AND
WRIT PETITION NO.5518 OF 2023

Subhodh Jayant Saraf

.... Petitioner

Versus

Shrimati Shila Jayant Saraf
and others

.... Respondents

.....
Mr. Mangesh S. Patil, Advocate for the Petitioners
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th JUNE, 2023

ORDER :

1. The petitioners in both these petitions are aggrieved by the order passed by the learned Joint Civil Judge, Senior Division, Jalgaon, thereby allowing the applications of respondent No.1 for recording her evidence on commission.

2. Petitioner No.1 is the son and petitioner No.2 is daughter-in-law of respondent No.1. Respondent No.1 filed Special Civil Suit No.11 of 2019 for declaration and possession. The petitioners being original defendants opposed the Suit by

filing written statement. The Petitioner No.1 has also filed Special Civil Suit No.60 of 2019 for declaration and injunction against the respondent and others.

3. Respondent No.1/plaintiff filed applications under Order XVI Rule 1 and 4 of the Code of Civil Procedure for recording her evidence on commission. Her applications were opposed by the petitioners by filing detail say. The Trial Court has allowed the applications in both the Suits. Hence, the present petitions.

4. Heard the learned advocate for the petitioners. Perused the memo of writ petitions, annexures thereto and the impugned orders.

5. Learned advocate for the petitioner strenuously submits that the respondent has travelled to the United States of America, and therefore, she is in a position to appear and depose in the Court. He further submits that there is no medical record to demonstrate that she is suffering from some ailments, and therefore, is unable to attend the Court for recording her evidence.

6. It appears from the record that respondent No.1 is 87 year old lady and she is suffering from age related health ailments. She has stated that it is not possible to her to travel

from Dombivli to Jalgaon for depositing before the Court. She claims to be unable to walk even for a distance of 100 meters. In the year 1999, respondent No.1 has undergone bypass surgery at Mumbai, and in 2002, she sustained fracture to her both legs. In 2003, she has undergone cataract operation, and in 2007, she suffered paralysis attack. Again, in 2013, she has undergone angiography and angioplasty. She also suffered from gangrene in the year 2013. In 2014, her retina surgery was performed, and in 2017, she suffered from heart problems, but considering her old age, the Doctor advised her not to undergo angioplasty again.

7. The Trial Court, considering the health problems suffered by respondent No.1 and the fact that she is 87 years old, has rightly allowed the applications filed by respondent No.1. No prejudice is likely to be caused to the petitioners if evidence of respondent No.1 is recorded on commission. There is no illegality or perversity in the orders impugned in the present petitions

8. Writ Petitions being devoid of merit are dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane